

# **NEW HAMPSHIRE REAL ESTATE COMMISSION**

## **COMMISSION MEETING**

**AUGUST 17, 2004**

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, August 17, 2004 at 8:30 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 8:30 a.m. by Chairman Arthur Slattery

Present: Commissioners Arthur Slattery, Robert Stephen, Pauline Ikawa, Nancy LeRoy, Barbara Heath, Executive Director Beth Emmons, and Investigator Ann Flanagan.

- I. Motion by Commissioner Stephen, seconded by Commissioner LeRoy, to approve and accept the minutes of the Commission meeting held on July 20, 2004.

II. **APPOINTMENTS**

8:30 a.m. - Equivalency Interviews

On motion by Commissioner Heath, seconded by Commissioner LeRoy, the Commission unanimously approved the following equivalency.

DEBORAH BRITTON

9:15 a.m. - MARK KULA appeared before the Commission to explain a previous legal incident prior to applying for an original salesperson's license. After review and discussion, the Commission unanimously decided to grant Mr. Kula a salesperson's license, based on the fact that his legal incident happen 15 years ago and he has had no further legal incidences, and the Commission felt there was sufficient evidence of rehabilitation presented.

9:55 a.m. - THERESA ALLEN appeared before the Commission requesting a waiver from RSA 331-A:18 - License lapsed after 6 month period from expiration date. Ms. Allen's real estate broker license lapsed on April 26, 2001. After an explanation by Ms. Allen on why she could not renew her license prior to the lapse date, the Commission explained to Ms. Allen that it was not under their statutory authority to waive RSA 331-A:18. On a motion by Commissioner Stephen, seconded by Commissioner Ikawa, the Commission unanimously denied Ms. Allen's request.

10:15 a.m. - RICHARD BERMAN of Richard Berman School of Auctioning for Real Estate appeared before the Commission to ask the Commission if it is permissible for a real estate licensee under RSA 331-A to conduct an auction. Mr. Berman asked the Commission to consider adding language to RSA 331-A which would prohibit a licensee from conducting auctions. Mr. Berman explained that there are no laws under RSA 311-B - Auctioneers, which prohibit real estate licensees from conducting auctions. After review and discussion, the Commission felt that language prohibiting real estate licensees from conducting auctions would appropriately fall under RSA 311-B, and directed the Executive Director to send a letter to the Auctioneer's Board stating

that the Commission would be in support of legislation which would prohibit real estate licensees from conducting auctions under RSA 311-B.

10:40 a.m. - WALTER BRESSLER of Coldwell Banker Brain Moses Realty appeared before the Commission to request the Commission to consider adding charities to RSA 331-A:4, Exempt Class. DAVID MALLOY of Cash Rewards, Inc. contributed in the discussion via telephone. After review and discussion, the Commission requested the matter to be tabled until the next scheduled Commission meeting to give David Malloy an opportunity to appear in person to provide additional information to the Commission to assist the Commission in making a determination.

### III. **OTHER BUSINESS**

1. Tuesday, September 21, 2004, was unanimously approved as the date for the next regular meeting.

#### 2. CASE EVALUATIONS

(a) **FILE NO. 2003-11-01**

Evaluator: Commissioner Ikawa

Determination: Should be heard, hearing to be scheduled.

(b) **FILE NO. 2003-12-03**

Evaluator: Commissioner Ikawa

Determination: Should be heard, hearing to be scheduled. In the alternative, the Commission unanimously decided to offer the Respondent a Settlement Agreement with a disciplinary fine in the amount of \$500 and a Commission accredited ethics course.

(c) **FILE NO. 2004-005**

Evaluator: Commissioner LeRoy

Determination: Should be heard, hearing to be scheduled. In the alternative, the Commission unanimously decided to offer the Respondent a Settlement Agreement with a disciplinary fine in the amount of \$500.00.

(d) **FILE NO. 2004-011**

Evaluator: Commissioner Slattery

Determination: Should not be heard, no hearing necessary.

(e) **FILE NO. 2004-012**

Evaluator: Commissioner Ikawa

Determination: Should be heard, hearing to be scheduled. In the alternative, the Commission unanimously decided to offer the Respondent a Settlement Agreement with a disciplinary fine in the amount of \$500.00.

3. **ORDERS**

The following Orders were issued by the New Hampshire Real Estate Commission. Copies of Orders are attached and become part of the official minutes of this meeting.

FILE NO. 2003-06-02 KATHLEEN & HALTON GRINDLE VS CYNTHIA MICHIE

FILE NO. 2003-03-05 WAYNE & MAUREEN DEKONING AND NEW HAMPSHIRE  
REAL ESTATE COMMISSION VS LEIGH BOSSE

FILE NO. 2002-09-02 CAMIL SAADE VS LYDIA FORTIER AND LAURIE POSHPECK

IV. **HEARING 11:05 AM**

FILE NO. 2002-01-01 NEW HAMPSHIRE REAL ESTATE COMMISSION VS JAMES T.  
ANECKSTEIN

Evaluator: Commissioner Slattery

The following persons were present at the hearing:

Commission: Commissioners Pauline Ikawa, Barbara Heath, Nancy LeRoy, Executive Director  
Beth Emmons and Investigator Ann Flanagan.

Stenographer: Camille M. Palladino-Duffy

Nolin, McKenna and Duffy Reporting  
Associates  
P.O. Box 1658  
Dover, NH 03821

Evaluator: Commissioner Slattery evaluated the above matter and abstained from participation in the discussion and resulting decisions. Commissioner Stephen was a recused member and abstained from participation in the discussion and resulting decisions.

Complainant: NHREC through its Investigator Ann Flanagan

Attorney: Pro Se

Witnesses: None

Respondent: James T. Aneckstein

657B Chestnut Street  
Manchester, NH 03104

Attorney: W. John Deachman, Esq.

Deachman & Cowie, P.A.  
38 W. Brook Street  
Manchester, NH 03101

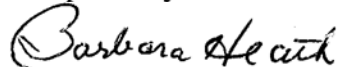
Witnesses: None

DECISION: Pending – subject to review of transcripts and exhibits.

V. **ADJOURNMENT**

Motion by Commissioner Heath, seconded by Commissioner Ikawa to adjourn the meeting. Acting Chairman LeRoy adjourned the meeting at 11:35 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Barbara Heath".

Barbara Heath  
Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION  
ORDER  
FILE NO. 2003-06-02  
KATHLEEN & HALTON GRINDLE  
VS  
CYNTHIA MICHIE  
(DIVERSIFIED REALTY)

This matter comes before the Real Estate Commission on the complaint of Kathleen & Halton Grindle, who allege violations of NH RSA 331-A: 26, V, XII, XXII, XXV, XXVI, XXVIII, XXXI, XXXVI; 331-A:25-a, I, II; 331-A:25-b, I(a), (b), b(2); 331-A:25-d, II(b), by Cynthia Michie. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Cynthia Michie (hereinafter referred to as Respondent) was licensed as a real estate salesperson on 4/24/96, and was licensed as a real estate broker on 5/11/01. Respondent is the principal broker of Diversified Realty and was so licensed at the time of the alleged violations.
2. On 3/10/03, Kathleen and Halton Grindle (hereinafter referred to as Complainants) listed their property located at Johnson Hill Road, Bradford, New Hampshire, with Respondent as their listing agent. The listed property consisted of a single family residence and two associated parcels of land which had not been subdivided.
3. On 3/21/03, Brett and Ellen Barselles made an offer to purchase the house.

4. On 3/23/03, Christopher and Montana Leisters made an offer to purchase the house through their buyer-agent Paul Messer with a provision stipulating interest in the adjacent land, but were told that someone else had bought it at full price even though the Barselles offer was not full price and there was a contingency clause addressing subsequent offers (Complainants Exhibit 1).
5. Based on Respondent's representation that there was no other interest in the property, Complainants removed the contingency in their P&S with the Barselles, which would have given them until 5 pm on 3/23/03 to present the Barselles with any other offer so that the Barselles could then overbid by another thousand dollars any other offer because the house would still be shown (Tr.1, p.22, 9-16).
6. Unbeknownst to Complainants, the Leisters had told Respondent that they were interested in making a full price offer for the house (Tr.1, p.23, 2-10).
7. Unbeknownst to Complainants, because Complainants never saw the Leister offer, Respondent voided it with Respondent's own initials (Tr.1, p.24, 1-7).
8. Respondent testified that the Leisters withdrew their offer (Tr.2, p.6, 3-5).  
  
However, the Leisters indicated that Respondent informed them that their offer

was declined, but that Respondent had bought the land and would be willing to sell it to them (Complainants Exhibit 1).

9. Respondent admitted that she and her husband were interested in purchasing Complainants' land because it was across the street from their own property (Tr.1, p.16-17, 18-2).
10. Respondent admitted that she received the Leister written offer from Paul Messer (Tr.1, p.16, 3-6).
11. Respondent testified that the second offer (Leister) came in two days after Complainants had accepted the Barselles offer (Tr.1 p.42, 5-7).
12. Respondent testified admitting that she did not present the Leisters' written offer to Complainants (Tr.2, p.27-28, 22-1).
13. On 3/24/03, Complainants accepted the offer from the Barselles for the residential property after asking Respondent if there was any other interest in the property and being told that there was no other interest. At the same time, Respondent inquired of Complainants what the minimum was they would take for the land (Tr.1 p.23, 12-16). Complainants then inquired of Respondent if there were any other interested buyers. When Respondent answered no, there was no other

interest, Complainants agreed to sell the two parcels of land to Respondent (Tr.1 p.12, 15-21).

14. On 3/24/03, without the knowledge of Complainants, and prior to executing a P&S with Complainants, Respondent had already listed the land on MLS with herself as the seller with a house to be built (Complainants Exhibit 2).
15. The P&S to sell the land from Complainants to Respondent was subsequently executed on 3/26/03 (Tr.1, p.34, 13-15).
16. On 3/29/03, Respondent executed a P&S with the Leisters to purchase the land from Respondent (Tr.1, p.35, 10-12).
17. Complainant testified that Respondent stood to make much more money selling one of the parcels for a \$18,000 profit and still retaining the other parcel, as well as having control over what went in her neighborhood, than she would have made selling it to them for commission on behalf of her clients, the Complainants (Tr.1, p.35-36, 14-2; Tr.1, p.37, 13-19).
18. Respondent released Complainants from their P&S contract when they confronted Respondent about what Respondent had done (Tr.2, p.62-63, 19-10).



19. Complainant testified that Respondent was disciplined at the Sunapee Board of Realtors and admitted that she did not present the Leister offer to Complainants (Tr.1, p.36-37, 19-3).
20. Complainant testified she found out later that other real estate agents had inquired about the property but were told to wait, presumably until after Respondent had the property tied up for herself with a P&S (Tr.1, 14, 5-9).
21. The Leisters testified that on 3/22/03, Respondent alluded to them that the land would be for sale soon (Tr.2, p.23, 11-23).
22. Respondent testified that she told Leisters that the land would be available soon because Complainants had not yet subdivided it (Tr.2, p.24-25, 3-2).
23. Complainant testified that Respondent told them that they could not accept a P&S on the property because it had not been subdivided (Tr.1, p.29, 1-3).
24. Complainants found out about the P&S between Respondent and the Leisters on 4/22/03 when they observed the Leisters walking their property (Tr.1, p.26, 5-10), but Respondent had denied knowing the Leisters even by name (Tr.1, p.27, 11-15).

25. Respondent acknowledged the e-mails she had sent to the Leisters previous to this on 4/10/03 (Tr.2, p.14, 9-12).
26. Respondent testified that her husband had been giving the Leisters construction estimates (Tr.2, p.13, 14-22).
27. Respondent testified that she felt Complainants underestimated what her time and energy (Tr.1, p.51, 9-10) were worth because Respondent felt that she went beyond the scope of her duties as their friend to help them with the construction of their new house (Tr.1, p.52, 2-6), with respect to justifying the money Respondent was to make by buying Complainants' land herself then reselling it.
28. Paul Messer testified that he was the co-broker and that when he presented the Leister offer for the land to Respondent that they thought that they were making the offer to Complainants, but that Respondent changed it to herself and her husband as the seller (Tr.1, p.69-70, 10-4).
29. Paul Messer testified that Respondent had indicated to him that she wanted to control what could be put on the land because it was in her neighborhood (Tr.1, p.70, 19-23).

30. Paul Messer testified that he advised the Leisters to get legal counsel because of the situation that Respondent was attempting to sell her clients' land with herself and husband as the seller (Tr.1, p.72-73, 22-6).
31. Mr. Leister testified that he asked Respondent if she owned the land and she said that she and her husband purchased it (Tr.2, p.40, 9-12).
32. Mr. Leister testified that they did not know at the time that they had signed the agreement to purchase the land from Respondent that it had not been annexed, and they only found out later because their closing was put off (Tr.2, p.45, 16-22). There were no conditions on the contract regarding the annexation (Tr.2, p.46, 3-4).
33. Mrs. Leister testified that Respondent never told them about the land needing to be subdivided, and that Respondent personally told her that she owned the land (Tr.2, p.46-47, 19-1, 15-18).
34. Mrs. Leister testified that they got an angry call from Complainant accusing them of trespassing because Complainant indicated that Respondent did not know who the Leisters were, even though the Leisters had a contract to purchase the land from Respondent and her husband (Tr.2, p.49, 1-15).

35. Complainant testified that prior to calling the Leisters about trespassing, Complainant had inquired several times of Respondent and was told by Respondent that she did not know the Leisters (Tr.2, p.50, 7-20).
36. Respondent testified that she thought that the subdivision would take a week or two weeks, rather than the two month ordeal that transpired (Tr.2, p.53, 1-2).
37. Paul Messer testified that he was surprised when Respondent called him and told him to instruct his clients (the Leisters) to stay off the land, and that he realized that there were problems between Respondent and her clients, the Complainants (Tr.2, p.56-57, 13-10).
38. Complainant testified that Respondent had told her that there could not be a purchase and sales agreement without a subdivision, and Complainant informed Respondent that an abutter was interested (Tr.2, p.59, 1-4).
39. Respondent testified that the abutter left her a couple of voice mail messages but she never returned his calls (Tr.2, p.59, 22-23).
40. Respondent testified that she never spoke to the abutter, but that she knew that the abutter did not want the annexation to happen (Tr.2, p.59, 14-16).

41. Respondent testified that she left the file containing Complainants' authorization (for her to represent the sale of the land with a house to be built) back at her office and would furnish that document to the Commission subsequent to the hearing (Tr.2, p.68, 6-20). Complainants denied ever signing such document (Tr.2, p.69, 2-3, 10-11). Respondent never furnished such document.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

The Commission finds Respondent to lack credibility in this matter. Respondent chose not to honor her fiduciary obligations to her clients, but rather chose to serve her own self interests (in violation of RSA 331-A:26, XXVIII, XXXVI; 331-A:25-b, I(b)). Complainants relied on Respondent to present all offers to them, and they also relied on Respondent to tell them of any interest in their properties, neither of which Respondent did (in violation of RSA 331-A:26, V). Respondent intended to purchase the properties herself so she did not disclose other offers (in violation of RSA 331-A:26, XXII). She misrepresented facts for her benefit until it was no longer practicable, and then she retreated from her P&S with Complainants. She got paid for selling the house to the Barselles, but if she had disclosed the Leisters' initial interest in the house, then perhaps Complainants could have received even more for selling their house. She personally voided the Leisters' offer to purchase and never presented it to her clients (in violation of RSA 331-A:25-a(I); 331-A:25-b, I(a); 331-A:25-b, I, b(2)). Her malicious intent was

further illustrated when she posted the MLS listing for the land with a house to be built, in order to market it on behalf of herself and her contractor husband, without the authorization of Complainants, and even prior to executing a P&S with Complainants to purchase the land (in violation of RSA 331-A:26, XXVI, XXXI). In Respondent's misplaced reasoning, she justifies attempting to receive more money for buying her clients' land then reselling it than she would have received on mere commission, because she felt Complainants underestimated what her time and energy were worth. Respondent felt that she went beyond the scope of her duties as their friend to help them with the construction of their new house. She also wanted to control what went on in her own neighborhood. Not only did Respondent deceive her clients, she also did not disclose to the Leisters that the land they were contracting to purchase from her had not been approved for subdivision and was contingent on her and her husband purchasing it (in violation of RSA 331-A:26, V). Furthermore, she never pursued her clients' request that she inquire about the abutter's possible interest in the land, which perhaps may have resulted in a potentially better price for the land. Respondent's husband constructs houses and the abutter was not likely to be interested in building on the land. Indeed, Respondent would not even return the phone calls the abutter had made to her. For the reasons stated above, the Commission rules that Respondent did violate the aforementioned statutes.

Complainants had accused Respondent of not presenting a dual agency consent agreement until after they had signed the P&S to sell their land to Respondent. The form is dated the same day, and in the absence of any time indicators, it is not possible to

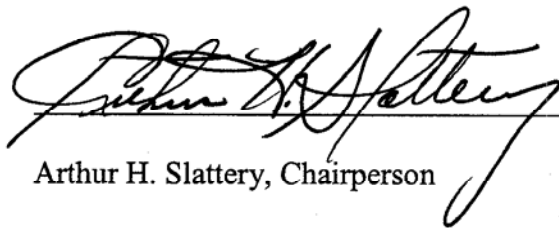
disprove Respondent's denial of that accusation. Due to lack of evidence to the contrary, the Commission rules that Respondent did not violate RSA 331-A:26, XII, XXV, 331-A:25-a, II, 331-A:25-d, II(b).

In view of the foregoing rulings of law, the Real Estate Commission hereby Orders that Respondent pay a disciplinary fine to the State of New Hampshire General Fund in the amount of: \$500 for RSA 331-A:26, V; \$250 for RSA 331-A:26, XXII; \$200 for RSA 331-A:26, XXVI; \$400 for RSA 331-A:26, XXVIII; \$250 for RSA 331-A:26, XXXI; \$250 for RSA 331-A:26, XXXVI; \$250 for RSA 331-A:25-a(I); \$250 for RSA 331-A:25-b, I(a); \$250 for RSA 331-A:25-b, I(b); \$500 for RSA 331-A:25-b, I, b(2) for a total of \$3,100 within six (6) months of the date of this Order. The Commission further Orders the suspension of Respondent's New Hampshire real estate license for a minimum time period of six (6) months. Respondent shall surrender her real estate broker wall license and pocket ID card to the Commission immediately, the receipt of which will commence the time period of the suspension. In addition, in order for Respondent to get her license back she must first complete the following New Hampshire Real Estate Commission accredited courses: a 40-hour pre-licensing course, a 3-hour ethics course, and a 3-hour contract law course. If Respondent does not complete these courses within one (1) year from the date of this Order, then her New Hampshire real estate license will be revoked.

Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's

disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

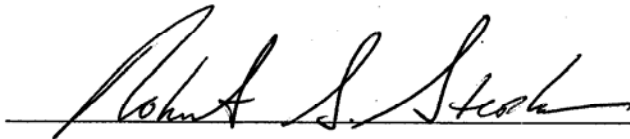
Commissioner LeRoy evaluated this case and did not take part in the hearing or decision.



Arthur H. Slattery, Chairperson

8/24/04

DATE



Robert S. Stephen, Commissioner

8/24/04

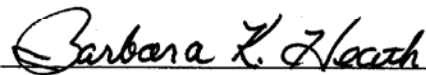
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Pauline A. Ikawa, Commissioner

8/27/04

DATE



Barbara K. Heath, Commissioner

8/26/04

DATE



WAYNE & MAUREEN DEKONING  
AND  
NEW HAMPSHIRE REAL ESTATE COMMISSION  
VS  
LEIGH BOSSE

FILE NO. 2003-03-05

This matter comes before the Real Estate Commission on the complaint of Wayne & Maureen DeKoning and on the complaint of the New Hampshire Real Estate Commission through its Investigator Ann Flanagan, alleging violations of NH RSA 331-A:25-b; 331-A:25-c; 331-A:25-d; 331-A:26, V, XV, XXIX, XXXI, XXXVI, and New Hampshire Code of Administrative Rules Rea 404.04(a) and Rea 701.01 by Leigh Bosse. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Leigh Bosse (hereinafter referred to as Respondent) was licensed as a New Hampshire real estate broker on 09/25/90, and was so licensed and the principal broker of Century 21 Red Coat Realty at the time of the alleged violations.

2. Respondent chose not to appear at the New Hampshire Real Estate Commission hearing scheduled for 06/15/04. (Hearing Notice with certified mail receipt, included in Claimant's Exhibit 1).

3. The Commission had received a letter from Respondent's attorney George Campbell III, from the law office of Robert Stein, indicating that they would not be appearing at the hearing.

4. The Commission proceeded to hear the testimony and receive the evidence offered by the parties bearing the burden of proof in the case (Wayne & Maureen DeKoning and the New Hampshire Real Estate Commission).

5. Maureen DeKoning testified that in February, 2003, Respondent sent listing solicitation letters to property owners at Emerald Lake in Hillsboro New Hampshire, which indicated that Respondent would represent the seller in the sale of their property and that the commission would be cut to five percent if one of the three named builders with which Respondent worked bought the lot (Tr. p. 8, 11-17).

6. Maureen DeKoning testified that Raymond and Barbara Grimard had received one of these listing solicitation letters (included in Claimant's Exhibit 1) from Respondent, and inquired of Wayne DeKoning who was a personal friend and a real estate agent with O'Neil's Realty, for Wayne DeKoning to check to see what similar lots had been selling for (Tr. p. 8-9, 23-4).

7. Maureen DeKoning testified that on 02//8/03, Wayne DeKoning checked the MLS and was surprised to see Respondent had listed Grimard's lot under contract and

listed it as a new residential for new construction owned by Mr. Dube who is one of the builders mentioned in Respondent's listing solicitation (Tr. p. 9, 9-13).

8. Maureen DeKoning testified that Wayne DeKoning saw that similar lots on the MLS were selling between \$15,000 and \$20,000 (Tr. p. 9, 14-15).

9. Maureen DeKoning testified that Mr. Grimard said that they had never listed their property with Respondent, and that they never signed a listing contract or a purchase & sales agreement (Tr. p. 9, 17-20).

10. Maureen DeKoning testified that Raymond and Barbara Grimard listed their property for sale with Wayne DeKoning as their listing agent (included in Claimant's Exhibit 1) (Tr. p. 9, 20-22).

11. Raymond Grimard testified that he received the listing solicitation in the mail from Respondent and that he talked to Respondent and wanted to make an appointment to discuss the matter.

12. Raymond Grimard testified that Respondent's listing solicitation letter indicated that his property at Emerald Lake had taken a big jump and was worth \$10,000 (Tr. p. 18, 17-22).

13. Raymond Grimard testified that subsequently but before he even had a chance to meet with Respondent, that Respondent sent him a sales agreement in the mail for signature (included in Claimant's Exhibit 1). When Respondent called him up to find out why he did not sign the sales agreement, he told Respondent that it was because Respondent had lied to him about the value of the property (Tr. p. 18-19, 23-7).

14. Raymond Grimard testified that he signed a listing agreement with Wayne DeKoning of O'Neil Realty to list his property for \$20,000 (included in Claimant's Exhibit 1).

15. Raymond Grimard testified that the signatures on the listing and purchase and sales agreement (included in Claimant's Exhibit 1) were not his signatures, and that he did not even know who Mr. Dube was (Tr. p. 20-22, 3-19).

16. Barbara Grimard testified that she and her husband always put both their names on any agreement they had ever signed, and that her signature was not signed (Tr. p. 20, 7-10).

17. Wayne DeKoning testified that Respondent was the only person involved with sending the listing to Jim Boiki at NNERN (Northern New England Real Estate Network) (Tr. p. 16-17, 17-8).

18. Maureen DeKoning testified that Respondent was the agent that worked with the builders (Tr. p. 17, 18-20).

19. Ann Flanagan, Investigator for the Commission, testified that Respondent was the only one who had interest in the listing and purchase and sales documents, and that he was the only one who had opportunity to forge those documents (Tr. p.15, 7-11).

20. Maureen DeKoning testified that Respondent withdrew his listing of Grimard's property from the MLS after confrontation with NNEREN regarding who had the listing (Tr. p. 10, 10-13).

21. Wayne DeKoning testified that the letter dated February 10, 2003, from Respondent to Jim Boiki and NNERN was signed by Respondent with a handwritten note at the bottom by Respondent (included in Claimant's Exhibit 1), and that it is similar to the forged signature on the listing agreement between Century 21 Red Coat Realty and Raymond Grimard (Tr. p. 14-15, 13-4).

22. Ann Flanagan, Investigator for the Commission, testified that Respondent in his Form 11-A reply to the complaint (included in Claimant's Exhibit 1) admitted that what he did was "stupid, ignorant and unprofessional", but that he never really addressed the issue in his reply of whether he forged the signatures.

23. Maureen DeKoning testified that the Grimard's property was entered into the MLS with O'Neil Realty on 02/10/03 for a listing price of \$20,000 and the property went under contract one day later for \$17,000 (Tr. p. 10, 14-16).

24. On 7/20/04 Respondent requested a Motion for Reconsideration appointment before the Commission, at which time he confessed that he did indeed sign the sellers name to the listing and purchase and sales documents (Tr. Motion for Reconsideration p.11, 1-16; p.27, 2-6).

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Respondent in his Form 11-A reply to the complaint admitted that what he did was "stupid, ignorant and unprofessional", but Respondent did not specifically address by admitting or denying the forgery allegations against him. Respondent was the only one who had motive and opportunity to commit the forgeries, and the handwriting is similar to his own. In Respondent's 7/20/04 Motion for Reconsideration appointment before the Commission, he confessed that he did indeed sign the sellers name to the listing and purchase and sales documents. The signatures on the listing and purchase and sales agreements were forged by Respondent (in violation of RSA 331-A:26, V). Respondent listed the Grimard's property on the MLS without a listing signed by the Grimards (in violation of Rea 404.04(a) and RSA 331-A:26, XXXI). Respondent did not inform the

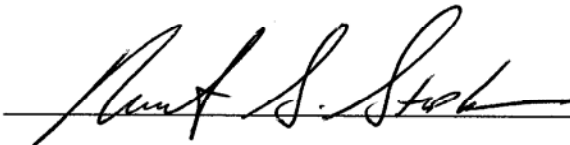
seller or buyer regarding property disclosure requirements in this transaction (in violation of RSA 331-A:25-b, (b,5) and 331-A:25-d, II(d)). Furthermore, since there were never any agency disclosure forms presented to anyone (in violation of Rea 701.01 and RSA 331-A:25-b, (b,4)), it is unclear whom Respondent intended to represent in these transactions – a listing would indicate that the real estate agent is representing the seller, but the listing solicitation letter indicated that Respondent worked with the builders. Respondent was acting as an undisclosed dual agent without the written consent of all parties involved in the real estate transaction (in violation of RSA 331-A:25-d, I). Respondent's indication that the properties were worth \$10,000 when they sold quickly for \$17,000 shows that Respondent was misrepresenting the value to the seller for the benefit of the buyer/builder (in violation of RSA 331-A:25-c, II(a) and RSA 331-A:26, V), while Respondent himself would stand to benefit by obtaining undisclosed subsequent listings from the builder (in violation of RSA 331-A:26, XV). The Commission finds Respondents actions to be unprofessional and untrustworthy (in violation of RSA 331-A:26, XXIX, XXXVI).

In view of the foregoing rulings of law, the Real Estate Commission hereby Orders that Leigh Bosse pay a disciplinary fine to the State of New Hampshire General Fund in the amount of: \$2,000 for RSA 331-A:26, V; \$500 for Rea 404.04(a); \$500 for RSA 331-A:26, XXXI; \$250 for RSA 331-A:25-b, (b,5); \$250 for RSA 331-A:25-d, II(d); \$100 for Rea 701.01; \$100 for RSA 331-A:25-b, (b,4); \$150 for RSA 331-A:25-d, I; \$350 for RSA 331-A:25-c, II(a); \$350 for 331-A:26, V; \$350 for RSA 331-A:26, XV;

\$2,000 for RSA 331-A:26, XXIX; \$2,000 for RSA 331-A:26, XXXVI, for a total of \$8,900 within one (1) year of the date of this Order. The Commission further Orders the permanent revocation of Leigh Bosse's New Hampshire real estate license. Leigh Bosse shall surrender his New Hampshire real estate broker wall license and pocket ID card and the New Hampshire real estate licenses of all real estate salespersons, associate brokers, managing brokers, and real estate offices under his license to the Commission.

Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

Commissioner Nancy LeRoy evaluated this case and did not take part in the hearing or decision.



Robert S. Stephen, Acting Chairperson

8/24/04

DATE



Pauline A. Ikawa

8/27/04

Pauline A. Ikawa, Commissioner

DATE

Barbara K. Heath

8/26/04

Barbara K. Heath, Commissioner

DATE

NEW HAMPSHIRE REAL ESTATE COMMISSION  
ORDER  
FILE NO. 2002-09-02  
CAMIL SAADE  
VS  
LYDIA FORTIER & LAURIE POSHPECK  
(PRUDENTIAL VERANI REALTY)

This matter comes before the Real Estate Commission on the complaint of Camil Saade, who allege violations of RSA 331-A:26, XXVIII, XXIX, V, IX, XXVI; RSA 331-A:25-b, I-b(2); II(a); Rea 404.04; Rea 701.05, by Lydia Fortier & Laurie Poshpeck. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Lydia Fortier (hereinafter referred to as Respondent) was licensed as a real estate salesperson on 10/7/97, and was associated with Prudential Verani Realty at the time of the alleged violations.
2. Laurie Poshpeck (hereinafter referred to as Respondent) was licensed as a real estate salesperson on 2/20/01, and was associated with Prudential Verani Realty at the time of the alleged violations.
3. Lydia Fortier was the listing agent and daughter of the seller for a property located at 45 Cross Street, Salem, New Hampshire.
4. Camil Saade (herein after referred to as Complainant) entered into a purchase and sales agreement to purchase the property, contingent on inspection and financing.
5. Laurie Poshpeck was assisting Lydia Fortier in the transaction with Complainant because Lydia Fortier was often not available due to a serious family medical situation.

6. The seller did not live at the property and the seller filled out the seller's property representation without information.
7. When Complainant did a home inspection, it revealed concerns about zoning, the status of the septic system, an illegal apartment, and a garage that was being used commercially which might require an environmental study. Complainant also had a list of other issues he wanted the seller to rectify.
8. Respondent Lydia Fortier testified that the situation regarding the zoning and illegal apartment with its need for a variance had been disclosed in writing to Complainant.
9. The seller was not able to get a variance from the town because there was an owner occupancy requirement, and the seller did not live at the property.
10. Complainant, however, intended to live at the property and would be eligible to apply for the variance.
11. The issue of the commercial use of the garage was unknown to the seller until Complainant's inspection revealed that one of the tenants was using the garage commercially without authorization. The seller subsequently initiated eviction proceedings against the tenant.
12. Complainant testified that he had background experience as a septic system engineer and was concerned about the slow progress regarding the status of the septic system, which the seller had agreed to repair.
13. Complainant had spent considerable effort attempting to get financing both commercially and residentially because of the mixed use of the property.

14. The seller was willing to work with Complainant and extend the dates in the contract; however, it was the inspection issues that could not be agreed upon and resulted in the termination of the transaction.
15. The seller and Complainant were not able to come to an agreement regarding all the inspection issues Complainant wanted addressed. Complainant never rendered the additional \$5,000 deposit after home inspection pursuant to the purchase and sales agreement.
16. Although Complainant wanted the return of his original \$500 deposit, Complainant has refused to sign any form of deposit release, even though the listing agency made every effort to word the language of the release to suit Complainant's indications.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Respondent Lydia Fortier did the right thing by having another agent in the office assist her in the transaction because she had to be unavailable so often due to her family medical situation. Respondent Laurie Poshpeck was a new agent in a difficult transaction. The Commission also encourages agents to seek assistance from their office managing broker when they sense potential problems. The \$500 escrow deposit properly remains in the listing agency's escrow account because Complainant has refused to sign any form of deposit release, even though the seller has agreed in writing and the listing agency has made every effort to word the language of the release to suit Complainant's indications. Indeed, Complainant is free to pen his own request for release of deposit but

has not done so. In a case like this the listing agency might consider releasing the deposit to Complainant pursuant to RSA 331-A:13, VI instead of IV. The Commission finds no evidence to the contrary, and therefore rules that Respondents did not violate any of the aforementioned statutes or rules.

Commissioner Arthur H. Slattery evaluated this case and did not take part in the hearing or decision.

Robert S. Stephen 8/24/04  
Robert S. Stephen, Acting Chairperson DATE

Barbara K. Heath 8/26/04  
Barbara K. Heath, Commissioner DATE

Pauline Ikawa 8/27/04  
Pauline Ikawa, Commissioner DATE

Nancy LeRoy 8/25/04  
Nancy LeRoy, Commissioner DATE